

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service;	)	CC Docket No. 96-45
	)	
TracFone Wireless, Inc. Petition to Rescind State	)	
911/E911 Condition	)	

**Released: May 3, 2010**

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Commission conditionally designated TracFone as an eligible telecommunications carrier (ETC) for the limited purpose of receiving universal service low-income support through the Lifeline program in its licensed service areas in several states.<sup>2</sup> TracFone's limited ETC designation is subject to, among other things, the condition that TracFone certify that it is in full compliance with state-level 911 and enhanced 911 (E911) obligations, including obligations relating to the provision and support of such service, before receiving Lifeline universal service support in a state.<sup>3</sup> Given the importance of ensuring that all consumers, including low-income consumers, have access to emergency services and consistent with the Commission's previous holding that TracFone must comply with state obligations relating to access to those services, we find that TracFone has not demonstrated sufficient cause to justify rescission of the state 911/E911 compliance certification requirement imposed in the *TracFone ETC Designation Order*.

## II. BACKGROUND

2. Congress established the federal universal service fund to help ensure that quality services are available at just, reasonable, and affordable rates for all consumers throughout the nation.<sup>4</sup> The Lifeline program furthers the goal of affordability by reducing the price of monthly telephone service for low-income consumers.<sup>5</sup> The universal service fund then reimburses carriers for the revenues foregone through its participation in the Lifeline program.<sup>6</sup>

3. Section 214(e)(6) of the Communications Act of 1934, as amended (Act), directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>7</sup> Before the Commission will designate a carrier as an ETC, the applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>8</sup> All ETC designations must be "consistent with the public interest, convenience and necessity."<sup>9</sup>

4. In the *TracFone ETC Designation Order*, the Commission conditionally designated TracFone as an ETC eligible to receive Lifeline support in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire,

<sup>2</sup> See *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, para. 1.

<sup>3</sup> *Id.* at 6213, para. 16.

<sup>4</sup> 47 U.S.C. § 254(b)(3).

<sup>5</sup> 47 C.F.R. § 54.401(a)(2).

<sup>6</sup> 47 C.F.R. § 54.407(b)–(c).

<sup>7</sup> 47 U.S.C. § 214(e)(6). Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2).

<sup>8</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para 20 (2005). Pursuant to section 214(e)(1) of the Act, a carrier must offer the supported services over its own facilities or a combination of its own facilities and resale of another carrier's service to be eligible for ETC designation. 47 U.S.C. § 214(e)(1). In the *TracFone Forbearance Order*, the Commission forbore from the section 214(e)(1) facilities requirement for TracFone, which is a wireless reseller, so that it could be eligible to receive Lifeline support. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15100, para. 12 (2005) (*TracFone Forbearance Order*).

<sup>9</sup> 47 U.S.C. § 214(e)(6).

Pennsylvania, and the District of Columbia.<sup>10</sup> To ensure that low-income consumers would have access to emergency services, the Commission expressly conditioned TracFone's eligibility for Lifeline support upon, among other things, TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service.<sup>11</sup> The Commission imposed this condition in response to both the "unique circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support" and the concern that TracFone had engaged in a pattern of behavior in several states of refusing to support 911 services.<sup>12</sup>

5. The Commission has pending before it two petitions contesting TracFone's self-certification to compliance with state 911/E911 requirements. The Alabama Commercial Mobile Radio Service Emergency Telephone Services Board has petitioned the Commission to reject TracFone's 911/E911 self-certification for Alabama, asserting that TracFone does not, in fact, remit the state-imposed 911/E911 surcharges.<sup>13</sup> A group of Colorado 911 authorities have also objected to TracFone's self-certification in that state.<sup>14</sup>

6. On July 16, 2009, TracFone petitioned the Commission to rescind the 911/E911 certification condition imposed in the *TracFone ETC Designation Order*.<sup>15</sup> TracFone claims that the Commission should rescind the condition because the "only reason for imposition of the state law certification condition" was to address several "false statements" in the record and because state agencies are "abusing" the certification process.<sup>16</sup>

### III. DISCUSSION

7. We deny TracFone's petition to rescind the 911/E911 certification condition of TracFone's ETC designation. TracFone has not presented any convincing evidence or arguments in its petition to suggest that the Commission should revisit its previous findings on the necessity for TracFone to certify compliance with state 911 and E911 requirements as a condition of its limited ETC designation.

8. The Commission adopted the 911/E911 certification condition in the *TracFone ETC Designation Order*, holding that TracFone's compliance with 911/E911 requirements was relevant to the issue of whether designation of TracFone as an ETC was in the public interest, as required by section 214(e) of the Act.<sup>17</sup> Given the circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support, the Commission imposed the 911/E911 certification condition as being necessary to counterbalance the potential disadvantages of designating TracFone a limited ETC.<sup>18</sup> The

<sup>10</sup> *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, para. 1.

<sup>11</sup> *Id.* at 6213, para. 16.

<sup>12</sup> *Id.* at 6212–13, paras. 15–16. The specific concern raised by the National Emergency Numbers Association was that TracFone had "offer[ed] to cooperate with 9-1-1 entities in the search for a fair and practicable way to surcharge prepaid services, only to turn against, and sometimes formally challenge, the legislative result." Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Apr. 3, 2008).

<sup>13</sup> Petition for Rejection of Certification and for Revocation of the Limited "ETC" Status of TracFone Wireless, Inc. in the State of Alabama, CC Docket No. 96-45 (filed Jan. 29, 2009).

<sup>14</sup> Letter from Dennis J. Tharp, Counsel for the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Emergency Communication Service Authority, and the Jefferson County Emergency Communications Authority, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197 (filed Jan. 28, 2010).

<sup>15</sup> TracFone Petition at 2.

<sup>16</sup> See Petition to Rescind at 7–8.

<sup>17</sup> *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

<sup>18</sup> See *id.*

certification condition echoed the Commission's previous finding in the *TracFone Forbearance Order* that "provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises" and its finding there that access to 911 and E911 was especially critical for TracFone's Lifeline customers because that service may be the customer's only means of accessing emergency services.<sup>19</sup>

9. In adopting the certification condition, the Commission affirmed its longstanding commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers. Indeed, the certification condition enforces the principle that Lifeline funds should not be disbursed to any carrier that is not providing access to emergency services nor complying with state-level obligations regarding 911 funding; that principle should be especially potent here, where extending emergency services to the most needy was a motivating factor in the Commission's initial grant of forbearance to TracFone.<sup>20</sup>

10. We conclude that TracFone has not demonstrated sufficient cause for rescission of the 911/E911 certification condition imposed in the *TracFone ETC Designation Order*. Contrary to TracFone's assertion that the Commission only imposed the state law certification requirement based on "false statements" in the record, the Commission's decision was based on its determination that compliance with state-level 911/E911 obligations was relevant to the public-interest assessment of TracFone's ETC designation requests.<sup>21</sup> TracFone also claims that state agencies are "abusing" the certification process with its evidence being the filing of the petitions with the Commission challenging TracFone's self-certification of compliance.<sup>22</sup> We, however, need not adjudge the merits of those petitions here because TracFone's argument here is essentially a replay of its previous argument specifically rejected by the Commission in the *TracFone ETC Designation Order*.<sup>23</sup> If compliance with state-level 911/E911 obligations was relevant to the public-interest assessment in designating TracFone an ETC, and the Commission found that it was, then surely ensuring that compliance through the certification process is also needed to protect the public interest. Moreover, if multiple state agencies assert that TracFone is not in fact complying with state-level 911/E911 obligations,<sup>24</sup> the question of whether TracFone's certification is accurate or not becomes all the more relevant. Accordingly, we deny TracFone's petition.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§ 1.103(a) and 1.4(b)(2), TracFone's petition to rescind the state-level 911/E911 obligations imposed in the Commission's *TracFone ETC Designation Order*, 23 FCC Rcd 6206, IS DENIED.

<sup>19</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16.

<sup>20</sup> *Id.*

<sup>21</sup> See *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

<sup>22</sup> See TracFone Petition at 7–8.

<sup>23</sup> *TracFone ETC Designation Order*, 23 FCC Rcd at 6212–13, paras. 15–16.

<sup>24</sup> See *supra* para. 5.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau